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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,125	04/08/2004	Mike Favet	GUID.119PA	8214

51294 7590 03/28/2007  
HOLLINGSWORTH & FUNK, LLC  
8009 34TH AVE S.  
SUITE 125  
MINNEAPOLIS, MN 55425

EXAMINER

MALAMUD, DEBORAH LESLIE

ART UNIT PAPER NUMBER

3766

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/28/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/821,125

Applicant(s)

FAVET ET AL.

Examiner

Deborah Malamud

Art Unit

3766

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-68 is/are pending in the application.
- 4a) Of the above claim(s) 16-67 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 68 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. The examiner acknowledges the amendments received 30 January 2007.

Claims 16-67 are withdrawn; new claim 68 is added; claims 1-15 and 68 are pending.

### ***Claim Objections***

2. In view of the amendments made to the status of the claims, the examiner withdraws the objection to claims 16-67.

### ***Response to Arguments***

3. Applicant's arguments filed 30 January 2007 have been fully considered but they are not persuasive. The applicant argues (page 15, "Remarks") that Gill (previously cited reference) "does not disclose pacing at a rate lower than bradycardia pacing," and that "[a]s such, Gill does not teach each and every element and limitation of independent claim 1 and cannot support an anticipation rejection of the claim." The examiner respectfully disagrees. It is noted that the features upon which applicant relies (i.e., pacing at a rate lower than bradycardia pacing) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Gill's device, as illustrated in previously cited paragraphs, discloses a treatment for asystole that comprises a non-physiologic, life sustaining pacing therapy, as required by claim 1.

4. For this reason, and for the reasons described in the previous Non-Final Office Action, the rejections are maintained.

Election/Restrictions

5. The applicant further argues, (pages 14, "Remarks") "Claim 1 recites 'non-physiologic, life sustaining pacing therapy' while claim 16 recites 'pacing therapy deliverable at a rate lower than a bradycardia pacing rate.' The Applicant respectfully submits that the phrases 'non-physiologic, life sustaining pacing therapy' and 'pacing therapy deliverable at a rate lower than a bradycardia pacing rate' both refer to asystole therapies in the context of the disclosure. For example, the specification states that '[i]n an embodiment in which asystole prevention pacing is also made available, the SCDP device 502 produces pacing pulses in accordance with a non-physiologic, life sustaining pacing therapy, such as pacing therapy deliverable at a rate lower than a bradycardia pacing rate.'" The examiner would again like to note that though the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. As it pertains to the restriction requirement, the energy delivery circuitry of claim 1 administers a different therapy strategy, in response to a different, more specific cardiac condition than that required by the energy delivery circuitry of claim 16. Since the two inventions (group I and group II, including base claims 1 and 16 respectively) comprise different energy delivery circuitry and control circuitry and treat different conditions with different strategies, group I has a separate utility from group I, and therefore the restriction is deemed proper.

***Claim Rejections - 35 USC § 102***

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
7. Claims 1-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Gill (U.S. 5,074,301). For a full discussion of the claimed elements, please see above, and the previous Non-Final Office Action.

***Claim Rejections - 35 USC § 103***

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
9. Claims 13-15 and 68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gill (U.S. 5,074,301). For a full discussion of the claimed elements, please see above, and the previous Non-Final Office Action.
10. As to claim 68, Gill discloses the claimed invention except for delivering pacing pulses at a rate between 5-20 pulses per minute. It would have been obvious to one having ordinary skill in the art at the time the invention was made to deliver pacing pulses at a rate of 5-20 pulses per minute, since it has been held that discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

***Conclusion***

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah Malamud whose telephone number is (571) 272-2106. The examiner can normally be reached on Monday-Friday, 9.00am-5.30pm.

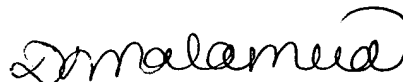
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Layno can be reached on (571) 272-4949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3766

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



CARL LAYNO  
PRIMARY EXAMINER  
ACTING SPE, AU 3766



Deborah L. Malamud  
Patent Examiner  
Art Unit 3766